

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,  
ex rel. JOHN M. GREABE,

Plaintiff,

V.

BLUE CROSS BLUE SHIELD ASSOCIATION,  
ANTHEM, INC. and BLUE CROSS  
BLUE SHIELD ASSOCIATION OF  
NEW HAMPSHIRE,  
Defendants.

C.A. No. 04-11355-MEL

**UNITED STATES' APPLICATION FOR LEAVE TO FILE  
STATEMENT OF INTEREST  
ON DEFENDANTS' JOINT MOTION TO DISMISS**

The United States of America, the real party in interest in this *qui tam* action, respectfully requests an opportunity to submit argument on issues raised in Defendants' briefs on their pending motion to dismiss. In their pending motion to dismiss and opposition to Relator's motion to file a second amended complaint, Defendants claim that the administrative procedures set forth in the Federal Employees Health Benefits Act (FEHBA), 5 U.S.C. §§ 8901-8914, and the regulations promulgated by the Office of Personnel Management (OPM) pursuant to the FEHBA preclude actions for liability and relief under the FCA. This position is an incorrect statement of the law. In fact, as demonstrated in the attached Statement of Interest, a properly framed FCA case may be brought in the district courts against an FEHBP administrator, and FCA damages and penalties may be imposed in such a case.

The FCA is the government's primary tool to recover losses due to fraud against the United States. *See* S. Rep. No. 345, 99th Cong., 2d Sess. at 2 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266; *Kelly v. Boeing Co.*, 9 F.3d 743, 745 (9th Cir. 1993). The FCA establishes a civil action for the recovery of damages and penalties from those who submit false or fraudulent claims to the United States. Congress intended the FCA to be read broadly:

[The FCA] is intended to reach all fraudulent attempts to cause the Government to pay out sums of money or to deliver property or services. Accordingly, a false claim may take many forms, the most common being *a claim for goods or services . . . provided in violation of contract terms, specification, statute, or regulation . . .*

S. Rep. 345, 99th Cong., 2d Sess. 25, *reprinted in* 1986 U.S.C.C.A.N. 5266, 5274 (emphasis added); *id.* ("claims may be false even though the services are provided as claimed if, for example, the claimant is ineligible to participate in the program."); *see also Shaw v. AAA Engineering & Drafting, Inc.*, 213 F.3d 519, 531-532 (10th Cir. 2000) (relying on legislative history to hold that "FCA liability under § 3729(a)(1) may arise even absent an affirmative or express false statement").

Relator, John M. Greabe, and Defendant Anthem Blue Cross Blue Shield of New Hampshire, through counsel, do not oppose this filing. Although attempts have been made by the government and counsel for Defendant, Blue Cross Blue Shield Association, to confer on this matter, no conference has taken place as of the time of this filing.

Because a ruling by the Court upon Defendants' arguments could affect the application of the FCA in other cases and other districts, the United States respectfully requests an opportunity to submit briefing on these important issues in its attached Statement of Interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to:

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